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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,094	10/17/2000	Graham Francois Duirs	08059.0004	8305

7590

12/04/2002

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EXAMINER

DEWITTY, ROBERT M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/622,094

Applicant(s)

DUIRS, GRAHAM FRANCOIS

Examiner

Robert M DeWitty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claims 1-8 are pending in the instant application. Acknowledgement is made of Applicant's continued prosecution application filed 6/18/02.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has included the limitation "finger means for allowing sustained release of substances over a period of time..." however the instant application does not contain such teaching. Applicant points to page 11, lines 7-12 as teaching a biodegradable coating that may allow the sustained release of drugs, however at that location the specification teaches only "...dispenser cavities could be loaded with substances using a biodegradable coating to regulate the release.", not the sustained release. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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2. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Fournier (Pat. No. 3,818,911).

Fournier teaches a vaginal applicator for liquid and semi-solid compositions. The applicators can consist of a base member, a support member, and a polymeric foam material (col. 4, lines 41-50). The polymeric foam can be provided with annular convoluted folds which extend downwardly to increase the surface area. The applicator can be supplied with pre-impregnated therapeutic and non-therapeutic compositions (col. 5, lines 4-6). When employed as a double surface applicator, removable foam layers can be used; detached and reimpregnated with any desired liquid or semi-solid composition. A double surface applicator can be refilled with new cured polymeric foam layers (col. 8, lines 15-20).

Regarding the structural teachings of the vaginal applicator, Fournier teaches the vaginal applicator has an elongated support member with a polymeric foam material possessing convoluted folds (col. 5, lines 36-43). In one embodiment, the applicator can be detachably affixed to an axially oriented elongated support shaft (col. 6, lines 17-20). It is the examiner's position that whereas Fournier utilizes different language to describe his invention, the invention nonetheless corresponds to the instant invention, i.e., the convoluted folds correspond to the plurality of fingers, the elongated support member corresponds to the central aperture, and the detachable affixment of the applicator to the elongated support shaft corresponds to releasably fixing the substance dispenser to the supporting structure. Thus, the instant invention is anticipated.

Response to Arguments

3. Applicant's arguments filed 6/18/02 have been fully considered but they are not persuasive.

Applicant asserts that amended claim 1 should be allowable because of the added limitation "sustained release of drugs over a period of time". Applicant has included this limitation because the Applicant asserts the examiner stated that the limitation was not included in the claim. However, as stated in the Advisory Action mailed 9/4/02, "...there is no teaching within the original specification for the sustained release of substances...". Fournier teaches all the limitations of the instant claims, and thus the rejection is maintained.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

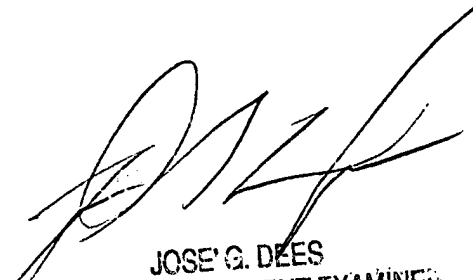
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4527. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
November 26, 2002


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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